Hillside Manor Health Related Facility *and* Local 144, Hotel, Hospital, Nursing Homes & Allied Health Services Union, Service Employees' International Union, AFL-CIO. Case 29-CA-7577

August 25, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 10, 1981, Administrative Law Judge Norman Zankel issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, Baine Service Systems, Inc., an *amicus curiae*, filed exceptions and a supporting brief, and the General Counsel filed a brief in response to the exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Hillside Manor Health Related Facility, Jamaica, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] In adopting the Administrative Law Judge's recommended Order, we note that one of the cases relied on for the remedy herein was enforced by the Ninth Circuit Court of Appeals. *Sun-Maid Growers of California* v. *N.L.R.B.*, 618 F.2d 56 (1980).

DECISION

STATEMENT OF THE CASE

NORMAN ZANKEL, Administrative Law Judge: This case[1] was heard by me on October 14, 1980, and February 10, 1981, at Brooklyn, New York.

Upon charges filed by the Union on November 2, 1979, the Regional Director for Region 29 of the National Labor Relations Board (the Board) issued the complaint and notice of hearing on December 31, 1979.

In relevant part, the complaint alleges that Hillside Manor Health Related Facility and Environmental Consultants, Inc. (hereinafter referred to as Hillside, Environmental, or Respondent), as joint employers of an appropriate unit of housekeeping and maintenance employees, unilaterally and unlawfully discharged the unit employees and thereafter subcontracted the unit work to another employer without having given the Union a prior opportunity to negotiate and bargain about the decision to terminate said employees and the effects of such termination. The alleged misconduct is pleaded as being in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act).

Hillside filed a timely answer to the consolidated complaint. The answer admitted certain matters but denied the substantive allegations and that Respondent committed any unfair labor practices.

All parties appeared at the hearing. Each was represented by counsel and was afforded full opportunity to be heard, to introduce and to meet material evidence, to examine and cross-examine witnesses,[2] to present oral arguments, and to file briefs. I have carefully considered the contents of the post-trial memoranda filed by counsel for the General Counsel, Hillside, and the Union.[3]

Upon consideration of the entire record, oral arguments of counsel, and their memoranda of law, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

No issue is raised as to jurisdiction or labor organization status.

At all material times, Hillside has been a copartnership duly organized under, and existing by virtue of, the laws of the State of New York. Hillside has maintained its principal office and place of business at 182-15 Hillside Avenue, Jamaica, New York.

Hillside is, and has been, engaged in providing nursing and other health related services. During the year immediately preceding issuance of the consolidated complaint, Hillside derived gross revenues from its operations in excess of $100,000, and purchased medical supplies and other goods and supplies valued in excess of $50,000 from firms located outside New York State, of which goods and supplies valued in excess of $50,000 were transported to Hillside's Jamaica, New York, facility directly in interstate commerce from States other than New York.

Upon the foregoing, and Hillside's admission, I find Hillside is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Additionally, based on Hillside's oral admission of the facts alleged in paragraph 10 of the consolidated com-

[1] Cases 29-CA-7577 and 29-CA-7578 were consolidated for hearing. At the hearing on February 10, 1981, the parties executed a so-called formal settlement stipulation, approved by me, which resolved some of the allegations emanating from the charge in Case 29-CA-7578. It appears that the charge in Case 29-CA-7577 is sufficiently broad to encompass the unsettled allegations. Accordingly, and for ready reference and convenience, Case 29-CA-7577 and 29-CA-7578 are hereby severed from one another. The caption reflects this action. Hereafter, the instant Decision deals only with the unsettled allegations, as described herein.

[2] No witnesses were presented to testify by any party.

[3] Errors in the transcript have been noted and corrected.

plaint, I find that Hillside and Environmental are, and have been at all material times, integrated enterprises having a common labor policy and thus are joint employers[4] of all the employees in the housekeeping and maintenance unit.[5]

Finally, Hillside admitted, the record reflects, and I find that the Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Based on Hillside's original answer to the consolidated complaint, its oral amendments to said answer, and unrefuted documentary evidence, the operative facts are undisputed. Accordingly, I find:

1. Stanley Dicker is, and at all material times has been, an owner and coowner of Hillside and acted in its behalf as its agent.

2. Judith Dicker is, and at all material times has been, an owner, copartner, and administrator of Hillside, and acted in its behalf as its agent and statutory supervisor.

3. Hillside and Environmental have maintained in effect and enforced, since on or about August 1, 1975, an arrangement and contractual relationship whereunder Environmental performs housekeeping and maintenance services at Hillside's Jamaica, New York, facility.

4. On July 1, 1979, the Union was the recognized and contractual exclusive collective-bargaining representative of all the employees in the above-described housekeeping and maintenance unit.

5. Hillside, by Judith Dicker, notified Environmental, on or about October 2, 1979, that it was terminating its housekeeping and maintenance contract with Environmental effective October 31, 1979.

6. On or about October 31, 1979, Hillside terminated its contract with Environmental and discharged the bargaining unit employees.

7. The following employees were on Environmental's payroll during the week ending October 31, 1979:

Aguilar, Carlos	Ferreira, Anna
Antal, Irene	Granobles, Silvio
Arana, Jorge L.	Greaves, George
Adorno, Iris	Henthshel, Dennis
Balcarcel, Eugenia	Leal, Beatrice
Valderama, Enrique	Lopez, Louis A.
Medina, Gisela	Nickacki, Milka
Barbot, Nelsia	Palencia, Apolonio
Castellano, Dalton	Quintanilla, Lillian
Garcia, Ralph	Reyes, Rene
Delgado, Jaime	Rodriguez, Edwin
Efremashvili, Eliz.	Rodriquez, Minerva
Fernandez, Lourdes	Speer, Martha

8. On or about November 1, 1979, Hillside retained Baine Service Systems, Inc., to perform the housekeeping and maintenance services at Hillside's Jamaica, New York, facilities.

9. On November 1, 1979, Baine and Local 917, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, signed a collective-bargaining agreement covering the employees in the housekeeping and maintenance unit formerly employed by Environmental. Said collective-bargaining agreement is effective from November 1, 1979, to October 31, 1982.[6]

10. The following individuals appear on Baine's payroll for the week ending January 24, 1980:

Aguilar, Carlos	Quintanilla, Lillian
Arana, Jorge L.	Reyes, Rene
Adorno, Iris	Rodriguez, Edwin
Balcarcel, Eugenia	Rodriquez, Minerva
Valderama, Enrique	Dawkins, Arzolia Jr.
Medina, Gisela	DeGracia, Ralph
Castellano, Dalton	Edwards, John
Delgado, Jaime	Evans, William J.
Efremashvili, Eliz.	Hodges, Clifford
Fernandez, Lourdes	Ortega, David E.
Ferreira, Anna	Pearson, Kevin
Granobles, Silvio	Richards, Kenneth
Greaves, George	Sheltun, Joey M.
Leal, Beatrice	Vazquez, Stephen
Lopez, Louis A.	Torres, William E.
Nickacki, Milka	Washington, John
Palencia, Apolonio	Rivera, Blanca
Robinson, Mattie P.	

11. Of the 35 employees on Baine's payroll for the week ending January 24, 1980, 21 such employees had been on Environmental's payroll for the week ending October 31, 1979.

12. There is no evidence that Hillside, Environmental, and the Union engaged in any collective-bargaining negotiations over Hillside's decision to terminate its employees on or about October 31, 1979, or over the effects of that decision.

B. *Analysis*

As earlier noted, the unsettled portion of the instant complaint presents the single substantive question whether Hillside unlawfully refused to bargain with the Union when it discharged the unit employees and subcontracted their work without first having given the Union an op-

[4] In addition to accepting Hillside's admission of the joint-employer relationship, I rely on its admissions that it was Hillside which (1) effected the unit employees' terminations (see sec. II, A,(6), *infra*), and (2) notified the Union that the contract with Environmental would be terminated. (See sec. II, A,(5), *infra*.) These events signify that Hillside retained and exercised substantial control of the housekeeping and maintenance employees, and over their work. See *Mobil Oil Corporation*, 219 NLRB 511 (1975).

[5] It is admitted that the appropriate unit is identified as follows:

> All housekeeping and maintenance employees at Hillside's Jamaica, New York facility, excluding all other employees, guards and supervisors as defined in the Act.

I find it a unit appropriate for collective-bargaining purposes. *Extendicare of West Virginia, Inc., d/b/a St. Luke's Hospital*, 203 NLRB 1232, 1233 (1973).

[6] Counsel for Baine Service Systems submitted post-hearing memoranda to me. I have considered those documents in the nature of *amicus curiae* briefs. Neither Baine nor Teamsters Local 917 is a party to the instant proceeding.

portunity to bargain over the subcontracting decision and its effects upon the unit employees.

Hillside does not contest the facts giving rise to the 8(a)(5) allegation. Thus, it is admitted that Hillside terminated the unit employees then on Environmental's payroll,[7] terminated its subcontracting arrangement with Environmental, and subcontracted the unit work to Baine. Although Hillside informed the Union of the employees' and the contract's termination, such notification was a *fait accompli*. The Union was not offered an opportunity to bargain over the decision to subcontract to Baine or the effects of that decision. Although Hillside is the sole Respondent herein, it is admitted that it and Environmental were integrated enterprises sharing a common labor policy and were joint employers of the unit employees.

No extensive analysis is necessary to conclude that Hillside unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

The decision to subcontract was made, the terminations were effectuated, and the subcontract with Baine was consummated by Hillside without any consultation, discussion, or negotiation with the Union.

In *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964), the Supreme Court held that the employer was obligated to bargain about an economically motivated decision to subcontract part of its operations. *Fibreboard* involved subcontracting of plant maintenance work. Elimination of unit jobs, albeit for economic reasons, is a matter within the statutory phrase "other terms and conditions of employment" and is a mandatory subject of collective bargaining. *Town & Country Manufacturing Company, Inc.*, 136 NLRB 1022, 1027 (1962).

Inasmuch as it is uncontested that the Union had been recognized as the exclusive collective-bargaining representative of the unit employees when the critical events herein occurred, I find that Hillside unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act, as alleged. *Sun-Maid Growers of California*, 239 NLRB 346 (1978); *Syufy Enterprises, a Limited Partnership*, 220 NLRB 738 (1975); *Ozark Trailers, Incorporated*, 161 NLRB 561 (1966); *Summit Tooling Company*, 195 NLRB 479 (1972).

CONCLUSIONS OF LAW

1. Hillside is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hillside and Environmental, at all material times, were joint employers of the employees in the appropriate bargaining unit described below.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of the Act:

> All housekeeping and maintenance employees at Hillside's Jamaica, New York facility, excluding all other employees, guards and supervisors as defined in the Act.

5. Hillside's failure to meet and bargain with the Union concerning the terms and conditions of its contract with Environmental and the contracting out of the housekeeping and maintenance work at its Jamaica, New York, facility constituted a refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Hillside violated Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist from engaging in such conduct in the future and affirmatively take such action as will dissipate the effects of its unfair labor practice.

A. *Introduction*

The General Counsel seeks a remedy which will restore the *status quo ante*. He claims such a remedy, in the circumstances herein, requires: (1) return of the terminated employees to their former or substantially equivalent positions of employment either jointly with Environmental and Hillside if Environmental is willing or, if Environmental is unwilling, with Hillside alone; (2) Hillside to make whole the terminated employees;[8] (3) Hillside to recognize and bargain with the Union as collective-bargaining representative of the unit employees; and (4) Hillside to cease and desist from engaging in further activities found unlawful herein, refusing to bargain with the Union, and recognizing any other labor organization as collective-bargaining representative of the unit employees.

Hillside does not disagree that some remedial order is warranted. However, Hillside claims that the General Counsel's proposed remedy is too broad. Specifically, Hillside contends that the remedy should not require it to reestablish its former relationship with Environmental. Instead, Hillside's position is that the Board's remedial order in *Mobil Oil Corporation, supra*, fn. 4, comprises an adequate remedy herein.[9]

The Union asserts that restoration of the *status quo ante* "can only be achieved by ordering Hillside to rescind its . . . subcontract with Baines [sic] and to directly employ the . . . unit . . . employees."

B. *Breath of the Order*

The principal remedial issue is presented by Hillside's contention that neither reinstitution of its contractual arrangement with Baine nor a change in the employment status of unit employees as Baine's is necessary to effect a satisfactory remedy. Thus, Hillside argues "that a reestablishment of the *status quo ante* would (1) abrogate an

[7] On April 16, 1980, Hillside moved to add, or implead, Environmental as a party-respondent. Those motions were denied by then Acting Chief Administrative Law Judge Arthur Leff on May 13, 1980. Administrative Law Judge Leff expressly reserved the option to Environmental, upon a proper showing, to intervene. Thereafter, Environmental neither sought to do so, nor did it appear at the instant hearing.

[8] I shall not deal with the make whole request, inasmuch as Hillside has undertaken such responsibility in the applicable settlement stipulation.

[9] Baine joins in this view in its *amicus curiae* memoranda.

existing relationship between . . . [it and Baine], and (2) "unnecessarily tamper with" the legal relationship between them.

In support, Hillside propounds several observations which fairly may be summarized as follows:

1. It would be futile to order reestablishment of the joint-employer relationship with Environmental because 2 full years have elapsed since Environmental's subcontract terminated and any reversion to the former stance would once again be subject to termination on 30 days' notice.

2. The displaced unit employees soon will be made whole as a result of the settlement stipulation, and the fact that each of them is employed by Baine and working again at Hillside's Jamaica facility signifies that each has been "reinstated" to his or her former or substantially equivalent employment position.

3. Undue hardship could result from the General Counsel's requested order because, unlike the situation in *Sun-Maid, supra*, where the respondent itself was performing the former unit work, herein it is a third-party employer (Baine) which has performed the unit work for over a year.

In essence, Hillside claims that the General Counsel's requested order unnecessarily encroaches upon "a long-standing relationship of two years with Baines [sic] Service,"[10] at the risk of possible loss of employment if the employees were to be placed again onto Environmental's payroll.

Superficially, Hillside's contentions are appealing. They address the Board's broad authority to adapt its remedies to each situation in practical terms. The Court in *Fibreboard* approved, *inter alia*, the Board's order of resumption of the maintenance operations unlawfully contracted out. Cognizant of its obligation to produce a viable remedy restoring the *status quo ante*, that remedy has not been ordered by the Board where circumstances dictated otherwise (*New York Mirror, Division of the Hearst Corporation*, 151 NLRB 834, 841–842 (1965)), or where such an order was not necessary to effectuate the policies of the Act and would impose an unwarranted burden upon the respondent. *Ozark Trailers, Inc., supra; Thompson Transport Company, Inc.*, 165 NLRB 746 (1967); *Drapery Manufacturing Co., Inc. and American White Goods Company*, 170 NLRB 1706 (1968); *Production Molded Plastics, Inc. and Detroit Molded Plastics Co.*, 227 NLRB 776 (1977).

An example of the Board's concern with the realities of circumstances in fashioning practical remedies is found in *Mobil Oil*. As noted, Hillside relies principally upon what the Board did in that case. I agree with Hillside that *Mobil Oil* is analagous. However, there are material differences.

In *Mobil Oil*, there existed a provision (as herein) for termination of the joint-employer relationship upon 30 days' notice. In *Mobil Oil* neither the contract termination nor the actual displacement of unit employees which resulted was alleged as a violation of the Act. Neither of these activities is alleged as a violation herein. Nonetheless, the displacement of unit employees is alleged as a separate violation of the Act in a related complaint (Cases 29–CA–7725 and 29–CB–4063).[11] Finally, in *Mobil Oil* neither the joint employer nor the ultimate subcontractor was a party to the proceeding. Herein, though Environmental and Baine are not parties, Baine appeared through able counsel who argued orally and filed *amicus curiae* memoranda.

In the above context, the Board, in *Mobil Oil*, found too broad Administrative Law Judge Boyce's order to revive the joint-employer relationship and the reinstatement of unit employees in that posture. In so doing, the Board commented:

> Adoption of the Administrative Law Judge's [remedy] . . . would require reinstitution of a legitimately terminated contract with an organization [the ultimate subcontractor] which is not a party to this proceeding and which has not been represented herein. [219 NLRB at 512.]

Additionally, the Board expressed its concern that the recommended Order "would be abrogating [Mobil's] existing agreement with [the ultimate subcontractor], another organization not named as a party." Thus, the Board declared "it is unnecessary to tamper with the legal relationships" of the joint employer and the ultimate subcontractor, since the bargaining order and the backpay which it ordered were deemed sufficient to remedy the violations. The Board merely required Mobil to bargain concerning the decision and effects of displacing the unit employees and to make them whole.

I find *Mobil Oil* is distinguishable. I conclude that the Board's rationale in that case is inapplicable herein. First, as noted, the displacement of unit employees in the case at bar *is* alleged as discriminatory, albeit in related proceedings. Next, Baine, the ultimate subcontractor herein, was and is represented by counsel.

Finally, the distinction I conclude is the most critical is the extent to which the unfair labor practice eroded the representational rights of the unit employees. Thus, in *Mobil Oil* there is no evidence whatever that the ultimate subcontractor had recognized and bargained with any labor organization. However, in the instant case, the Union not only had been displaced, but actually was replaced, when Baine recognized Teamsters Local 917 and signed a collective-bargaining agreement covering the unit employees with the Teamsters.[12]

It is virtually self-evident that the Union's effectiveness as bargaining agent of the unit employees has been vastly diminished. Moreover, those employees have been deprived of whatever salutary effect had been achieved by the period of representation by the Charging Party Union. Thus, the conduct found unlawful herein has the

[10] Hillside's argument also notes the presence of hostility between it and Environmental due to pending litigation in another forum. Inasmuch as this is not reflected in the record except by way of argument, I consider it of little probative value.

[11] These two cases originally were consolidated with the case at bar. Hearing proceeded simultaneously and the cases were severed. Presently those cases stand adjourned *sine die*, pending the disposition of the instant case.

[12] I do not now pass upon the propriety of these activities. That conduct is alleged, *inter alia*, to be violative of Sec. 8(a)(2) of the Act in the related complaint in Cases 29–CA–7725 and 29–CB–4063.

obvious tendency to emasculate the Union's representational status. It literally destroyed the free exercise by the employees of their Section 7 rights. In this backdrop, entry of a bargaining order similar to that in *Mobil Oil* affords little hope of meaningful negotiations. The opportunity for "genuine bargaining" is a prime objective of the Board's *status quo ante* remedies. *Syufy Enterprises, supra.* To assure an opportunity for such meaningful bargaining, I conclude it is necessary that the Order require a *full and complete* restoration of the parties' respective positions immediately prior to the unlawful conduct.

In the circumstances herein, Hillside's arguments of futility and hardship are unpersuasive. On balance, I conclude that greater futility is engendered by leaving the employees in place as Baine's employees and represented by the Teamsters than is likely to be encountered by restoration of the joint employer relationship and return of the Charging Party Union to its former representative status. As noted above, the very purposes of *status quo ante* remedies would be severely frustrated, if not rendered illusory, by another result.

Similarly, Hillside's appeal that the Board should not disturb the apparently legitimate termination of the joint-employer relationship nor derogate from the existing agreement between Hillside and Baine is unconvincing. In the settlement stipulation, the parties agreed that between December 24, 1979, and January 12, 1980, the unit employees "were offered reinstatement and reinstated to substantially similar positions [held before their terminations on November 1, 1979] at [Hillside's] facility." The payroll records, in evidence, support that agreement. Thus, the unit employees currently are working at Hillside's facility. However, they are working under different terms and conditions of employment, and for a different employer, Baine, from those that existed before their terminations. Also, the employees are represented by a substituted labor organization, the Teamsters.

There is indeed hardship, but it is borne by the employees, not the employers involved. There is scant evidence, if any, to support Hillside's contention that the type of undue hardship considered by the Board to warrant excuse from complete restoration of the *status quo ante* exists herein. Thus, the Board has not ordered resumption of discontinued operations where an employer would have been harmed by sale or transfer of its machinery and loss or limited life of its lease, *Avila Group, Inc.*, 218 NLRB 633 (1975); *Burroughs Corporation*, 214 NLRB 571 (1974), or where such resumption otherwise would be unduly burdensome. *Production Molded Plastics, supra; Donn Products, Inc., et al.*, 229 NLRB 116, 118 (1977); *Great Chinese American Sewing Company, et al.*, 227 NLRB 1670 (1977). No such circumstances have been asserted herein. Absent such a showing by Hillside, restoration of the operations will be directed. *Jays Foods, Inc.*, 228 NLRB 423, 424 (1977); *Frito Lay, Inc.*, 232 NLRB 753, 755 (1977).

Finally, I disagree with the General Counsel that the order herein must explicitly require Hillside to cease and desist from recognizing any labor organization other than the Union as representative of the unit employees. As the General Counsel submits, such an explicit directive is, indeed, contained in the remedy awarded in *Sun-Maid*. However, the *Sun-Maid* order did not specifically grant the restored bargaining requirement *exclusively* to the charging party. My recommended Order will make the Union the *exclusive* collective-bargaining agent of the unit employees. Because of this, and because this request of the General Counsel is more properly an adjunct of a violation, if one were to be found, in the adjourned proceedings in Cases 29-CA-7725 and 29-CB-4063, I conclude that the grant of the General Counsel's request would be inappropriate in the circumstances and that the explicit terms of my recommended Order will serve to achieve the necessary goal of eliminating Teamsters Local 917 from contention as the unit employees' representative.

C. *Effect of the Joint-Employer Relationship*

As indicated, the parties agree that Hillside and Environmental were, at all material times, joint employers of the unit employees. The question arises: What impact does this relationship have to the remedial order under consideration?

It is recalled that Environmental never has been a party to the instant proceedings. Notwithstanding the Board considered this fact when it declined to issue its order against the joint employer in *Mobil Oil*, I conclude that the instant order should impose remedial obligations upon both Hillside and Environmental.

In *Sun-Maid* the Board's remedial order required the respondent to reinstitute its relationship with its joint employer, although the latter had not been a party to the proceeding. In *Sun-Maid*, Administrative Law Judge Pannier observed:

> [T]o assure that the status quo is restored to the fullest degree possible [the respondent] shall be ordered to . . . first . . . reestablish its verbal contract with [its joint employer] so that the joint-employer relationship that existed prior to [the unfair labor practices] can be restored. [239 NLRB at 355.]

The Board left Administrative Law Judge Pannier's observation undisturbed. Indeed, at footnote 2 the Board expressly noted that the recommended remedy was consistent with Board precedent.

Herein, Hillside is bound by its admission that it was a joint employer with Environmental. In *Ref-Chem Company, etc.*, 169 NLRB 376, 380 (1968), the Board observed, "As joint employers, each [entity] is responsible for the conduct of the other and whatever unlawful practices are engaged in by the one must be deemed to have been committed by both. . . . the nature of the joint-employer relationship is such that the charge against Respondent Ref-Chem also constituted a charge against [its joint employer] for any unfair labor practices found against its coemployer Ref-Chem."[13]

[13] Based on this declaration, the Board rejected the argument that a charge filed against the originally unnamed joint employer more than 6 months after the occurrences, but naming that joint employer for the first time as a charged party, was barred by the Act's statute of limitations, Sec. 10(b).

Based on the foregoing, I conclude that it is appropriate that the order recommended herein be imposed upon both Hillside and Environmental, as joint employers.

In imposing joint responsibility, I have considered the fact that the joint-employer relationship was terminable at will upon 30 days' notice. Thus, simply to require both these entities to perform the remedial obligations gives no assurance of complete compliance. Accordingly, in order to obtain maximum effect of the recommended Order, it will be couched in the alternative, securing in Hillside the greatest degree of compliance potential in the event it elects to terminate its relationship with Environmental. The degree of control exercised by Hillside in the scenario of events (e.g., Hillside terminated the employees on Environmental's payroll and notified the Union the joint-employer relationship was terminated) makes such a result particularly appropriate. Thus, the Order will require the terminated employees to be employed by Hillside in the event Environmental is unwilling or unable, for lawful reasons, to reemploy them.

D. *General Proscriptive Provision*

No evidence was adduced to show that Hillside has a proclivity to violate the Act. Accordingly, I conclude that it is unnecessary that the Order contain broad proscriptive language. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). Instead, Hillside shall be ordered to refrain from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

Upon the foregoing findings of fact, conclusions of law, the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[14]

The Respondent, Hillside Manor Health Related Facility, Jamaica, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 144, Hotel, Hospital, Nursing Home & Allied Health Services Union, Service Employees' International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit found appropriate herein with respect to wages, hours, and other terms and conditions of employement:

> All housekeeping and maintenance employees at Hillside's Jamaica, New York facility, excluding all other employees, guards and supervisors as defined in the Act.

(b) Unilaterally subcontracting unit work or otherwise changing the wages, hours, and other terms and conditions of employment of the unit employees without prior bargaining with the above-named labor organization or any other labor organization they may select as their exclusive bargaining representative.

(c) Implementing, or giving effect to, the terms of its subcontracting arrangement with Baine Service Systems, Inc.

(d) In any like or related manner interfering with, restraining, or coercing the unit employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Reinstitute the housekeeping and maintenance operation at its Jamaica, New York, facility as it existed on October 31, 1979.

(b) Reinstate its joint-employer relationship with Environmental Consultants, Inc., and reinstate the unit employees who were on Environmental's payroll on October 31, 1979, to their former or substantially equivalent positions with Environmental or, if Environmental is unable or unwilling, for any lawful reason, to reemploy such employees or maintain such employment relationship with the unit employees, then those employees shall be employed directly by Hillside.

(c) Recognize and, upon request, bargain collectively in good faith with Local 144, Hotel, Hospital, Nursing Home & Allied Health Services Union, Service Employees' International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the housekeeping and maintenance unit found appropriate herein with respect to their wages, hours, and other terms and conditions of employment.

(d) Post at its Jamaica, New York, facility copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Hillside's representative, shall be posted by Hillside immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Hillside to insure that said notices are not altered, defaced, or covered by any other material.

In order to effectively convey the message contained in the notice, provision should be made to assure that all affected employees are aware of it. *Amshu Associates, Inc. and Spring Valley Garden Associates*, 218 NLRB 831, 836-837 (1975). Because it appears that the affected unit employees currently are in the employ of Baine, Hillside is directed to obtain a list of the names and addresses of each unit employee[16] from Baine so that Hillside will be able to mail individual copies of the notice to each unit employee. The notice shall be prepared by the Regional Director in sufficient numbers to permit such mailing. Such notices shall be forwarded by the Regional Direc-

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[16] I perceive no issue of confidentiality preventing procurement of such a list in view of the requirement of the reemployment mandate which forms part of complete restoration of the *status quo ante*.

tor to Hillside. Within 5 days of receipt thereof, Hillside shall mail a copy of the notice to each unit employee. Upon completion of such mailing, Hillside shall forthwith submit to the Regional Director a list of the names and addresses of each employee to whom the notice was mailed, together with a certification signed by an authorized representative of Hillside that it has completed the mailing in accordance with the terms of this Order.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Hillside has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT refuse to bargain collectively with Local 144, Hotel, Hospital, Nursing Home & Allied Health Services Union, Service Employees' International Union, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit:

All housekeeping and maintenance employees at our Jamaica, New York facility, excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT unilaterally subcontract housekeeping and maintenance work or otherwise make changes in the wages, hours, and other terms and conditions of employment of the employees in the above-described unit without prior bargaining with the above-named Union, or any other labor organization those employees may select as their exclusive bargaining representative.

WE WILL NOT implement, or give effect to, the terms of our subcontracting arrangement with Baine Service Systems, Inc., to perform the housekeeping and maintenance work at our Jamaica, New York, facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce the employees in the appropriate unit described above in the exercise of the rights set forth herein.

WE WILL reinstitute the housekeeping and maintenance operation at our Jamaica, New York, facility as it existed on October 31, 1979.

WE WILL reinstate our former relationship as joint employer with Environmental Consultants, Inc., of the employees in the appropriate unit described above, and reinstate all such employees who were on Environmental's payroll on October 31, 1979, to their former or substantially equivalent positions with Environmental or, if Environmental is unable or unwilling, for any lawful reason, to reemploy those employees or maintain such employment relationship with the unit employees, then WE WILL employ them.

WE WILL recognize and, upon request, bargain collectively in good faith with Local 144, Hotel, Hospital, Nursing Home & Allied Health Services Union, Service Employees' International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the appropriate unit described above with respect to the wages, hours, and other terms and conditions of employment of those employees.

HILLSIDE MANOR HEALTH RELATED FACILITY